

HIGHLAND LICENSING COMMITTEE

Meeting – 6 August 2013

Agenda Item	8
Report No	HLC/053/13

Consultation on Regulation of Sexual Entertainment Venues

Report by the Legal Manager

Summary

This Report invites the Committee to agree a response to this consultation.

1 BACKGROUND

- 1.1 The key aims of civic licensing are the preservation of public safety and order and the prevention of crime. A range of premises and venues are subject currently to licensing, including pubs, clubs and other venues selling alcohol, theatres and public entertainment venues, etc. The Scottish Government considers that it is appropriate that sexual entertainment venues should be licensed in order that both performers and customers benefit from a safe, regulated environment. The Government believe that the licensing of these venues would limit the risk of criminality, such as prostitution and human trafficking.
- 1.2 Sexual entertainment covers a range of different legal activity, including lap dancing, strip shows, peep shows and live sex shows. It includes entertainment provided by both male and female performers. The Government are clear that the licensing of sexual entertainment venues should not inadvertently hinder artistic performance. Sexual entertainment licensing would not cover or authorise currently illegal activity, such as brothel keeping or trading in prostitution.
- 1.3 By consulting on a licensing regime for legal activities, the Scottish Government does not seek to endorse or condone these activities. Indeed, the Scottish Government's definition of violence against women includes commercial sexual exploitation, which encompasses many of these sorts of activities. The proposals seek to balance individual freedom of choice with a local community's right to exercise control and regulate sexual entertainment venues that operate within its areas. Local licensing authorities are best placed to reflect the views of the communities they serve and determine whether sexual entertainment establishments should be authorised and under what conditions. Where a venue is approved, licensing conditions and enforcement should assist in protecting the safety and wellbeing of both staff and customers and the wider public.

1.4 Regulation of adult and sexual entertainment has been looked at on a number of occasions in recent years. On 24 March 2005, previous Scottish Ministers set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity.

1.5 The Working Group membership consisted of representatives from local government, operators and women's support workers. The remit of the group was:

- to identify all relevant activities (whilst recognising the need not to suppress artistic freedom)
- to consult with all relevant interest groups (including women's groups; and employees and employers in the adult entertainment industry)
- to commission research into the activities and associated impacts (using anonymous sources where appropriate)
- to identify and assess relevant types of controls, including the implementation and impact of any controls
- to recognise the need to balance local and national interests
- to take account of concurrent work on prostitution and regulations for lap dancing in licensed premises
- to report to Ministers in April 2006, with recommendations.

The Group adopted a definition of adult entertainment of, "The performance in a public place of any activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification and/or titillation."

1.6 The Group made a number of recommendations aimed at improving standards in the industry, ensuring the safety of performers and customers, regulating the impact on the locality, improving local accountability and control and ensuring that there was no inadvertent impact on artistic freedoms. The full recommendations and post consultation work can be found in the Group's reports:
<http://www.scotland.gov.uk/Publications/2006/04/24135036/0>
<http://www.scotland.gov.uk/Publications/2006/04/24111914/0>

1.7 At the time, it was felt that as sexual entertainment venues also sold alcohol and therefore required alcohol licences, it was best left to local licensing boards to regulate adult entertainment via the licensing system of alcohol. It would be up to local boards to consider the situation in their locality and set policies accordingly. They would have the discretion to use the recommendations of the Working Group as a template.

- 1.8** A specific system of licensing for sexual entertainment was considered by Parliament in 2010 as part of the Criminal Justice and Licensing (Scotland) Act 2010. These proposals largely mirrored those that had been introduced in England and Wales by the Policing and Crime Act 2009. Whilst the Scottish Government supported such a move, Parliament rejected these proposals due to concerns around the effect of operating a dual licensing system with sexual entertainment being regulated under a regime of its own as well as under the alcohol licensing system. In addition, there was concern that the proposals were introduced late in the Bill process and had not had the opportunity for scrutiny.
- 1.9** However, the regulatory context has changed since 2010. Recent court judgements have called into question the ability of licensing boards to set conditions that stray from a tight focus on the sale of alcohol. This leaves uncertainty in the regulation of sexual entertainment, with many licensing boards believing that the alcohol licensing system is not, as currently constructed, able to provide adequate control, and that there is no effective alternative in place.
- 1.10** The view of the Scottish Government is that a specific licensing regime for sexual entertainment venues (of which it is believed there are around 20 in Scotland) is the best solution for future regulation of the industry. It removes uncertainty around attempting to regulate under alcohol licensing matters that go beyond the remit of that scheme. It offers local licensing authorities the ability to consider local circumstances and develop approaches appropriate to those circumstances. This would include the ability to set a desired number of sexual entertainment premises for their area (and for that number to be zero). It would also include the ability to set conditions that control the conduct of activities on premises in their area.

2 CONSULTATION

- 2.1** The purpose of this consultation is to invite views on the establishment of a licensing regime for sexual entertainment venues along the lines considered by Parliament in 2010. Such a regime would be introduced by inserting provisions into the Civic Government (Scotland) Act 1982 and using the architecture provided by that Act to set conditions and determine the process for dealing with applications. It would be at the discretion of the local licensing authority as to whether or not a licensing regime was needed in their area.
- 2.2** The Consultation was sent to members of the Committee on 18 July 2013 in order that they could acquaint themselves with the issues being aired.
- 2.3** The deadline for responding is Tuesday 24 September 2013.

3 RESPONSE

3.1 A draft response is attached as Appendix 1 which can be used as a basis for discussion.

RECOMMENDATION

The Committee is invited to agree a response to the consultation.

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Background Papers: Consultation Paper on Further Options for Alcohol Licensing

Appendix: Draft response

Draft response to Consultation on the Regulation of Sexual Entertainment Venues**Q1. Should sexual entertainment and the sale of alcohol be licensed separately? If so, what impact, if any, would a parallel regime for sexual entertainment venues have on alcohol licensing?**

Yes. Separate licensing regimes would remove the current widely held misconception that Licensing Boards “licence” adult entertainment as opposed to licensing the sale of alcohol at venues at which adult entertainment is one of the other activities carried on. It would also resolve the current situation whereby Boards are attempting to regulate adult entertainment by imposing premises licence conditions (for the protection of performers, etc) which are unrelated to the sale of alcohol and are therefore open to challenge in light of the Brightcrew judgment.

Q2. Do you agree that sexual entertainment premises should be licensed separately from other forms of public entertainment?

Yes.

Q3. Is the definition of an audience as ‘an audience of one’ appropriate?

Yes.

Q4. Is the definition of sexual entertainment sufficiently clear? Are additional measures required to protect the position of artistic performances including, for example, exotic dancing?

Yes. It would not be helpful to list specific forms of performance which were excluded from the definition of sexual entertainment, such as “burlesque” or “exotic dancing”, without further definition of these forms of performance to distinguish them clearly from sexual entertainment. Otherwise, there would be a possibility of organisers seeking to circumvent the licensing requirements by simply naming or advertising a performance as burlesque or exotic dancing, when in fact it is sexual entertainment within the meaning of the proposed definition of the latter term.

Q5. Are there any other venues which should be exempt?

No.

Q6. Is it appropriate that premises that are used for sexual entertainment on less than three occasions per year should be exempt from licensing?

No. It makes no sense that the licensing authority would have power to set a desired number of sexual entertainment venues for localities in their area as nil, but then have no means of stopping any number of premises in those localities from providing sexual entertainment provided they did so only once or twice a year. Separately, it removes the ability of licensing authorities to set conditions controlling the sexual entertainment provided at premises which provide sexual entertainment only once or twice a year. Conditions such as conditions for the protection of performers and conditions for the protection of children and young persons are surely as necessary at premises providing sexual entertainment once or twice a year as they are at premises providing such entertainment all year round.

Q7. Is it appropriate that local authorities be allowed to decide that there should be no sexual entertainment venues in their area?

Yes, however it would be useful for the legislation to set out the matters which a Council could take into account in reaching such a decision or for the Government to provide guidance on this issue.

Q8. Does the approach detailed above offer an adequate regulatory regime to provide control of sexual entertainment and provide local licensing authorities with the powers to determine the nature of the activities they wish to allow in their areas?

Subject to comments at Q6 above, yes.

Q9. Are there any other issues which Scottish Ministers should take into account in considering possible legislation to provide for the licensing of sexual entertainment venues?